



The following constitutes
the order of the court. Signed July 31, 2015

William J. Lafferty, III

William J. Lafferty, III
U.S. Bankruptcy Judge
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES BANKRUPTCY COURT
For The Northern District Of California

In re:

JORGE EDGARD QUINONES and LIDIA
DELVALLE QUINONES,

Debtors.

THE BOARD OF TRUSTEES, in their
capacities as Trustees of the CEMENT
MASONS HEALTH AND WELFARE
TRUST FUND FOR N CA, ET AL.,

Plaintiffs,

vs.

JORGE EDGARD QUINONES and LIDIA
DELVALLE QUINONES,

Defendants.

Case No. 12-46834 WJF

Chapter 7

Adversary No. 13-04016

MEMORANDUM REGARDING RECENT NINTH CIRCUIT DECISION

Jorge and Lidia Quinones, defendants in the above captioned adversary proceeding, have filed and served a Motion for Summary Adjudication, which has been set for hearing on Wednesday, August 12 at 10:30 a.m. The Motion seeks relief with respect to the Second Claim in the First Amended Complaint, which asserts that a debt owing to plaintiff, The Board of Trustees, in their capacities as Trustees of the Cement Masons Health and Welfare Trust Fund for Northern California, et al., is non-dischargeable pursuant to the

1 provisions of 11 U.S.C. Section 523(a)(4) (Fraud or Defalcation By a Fiduciary, Larceny, Embezzlement).
2 Plaintiff has filed an opposition to the Motion for Summary Adjudication, and has filed its own Motion for
3 Summary Adjudication of the Second Claim for Relief, which is set for hearing on September 2, 2015 at
4 10:30 a.m.

5 As the parties may well be aware, on July 30 the Ninth Circuit Court of Appeals published an
6 opinion in the case of *Bos v. Board of Trustees in their capacity as Trustees of the Carpenters Health and*
7 *Welfare Fund of California, etc.*, No. 13-15604, which determined that an employer's contractual
8 requirement to contribute to an employee benefits trust fund does not make it a fiduciary of unpaid
9 contributions. *Bos v. Board of Trustees*, at 13.

10 Obviously, the *Bos* opinion is of high importance to the court's determination of the Second Claim
11 for Relief, at least to the extent that claim relies on a defalcation by a fiduciary theory. The parties should be
12 prepared to discuss the Ninth Circuit's opinion in *Bos* during the August 12 hearing on the Defendants'
13 Motion for Summary Adjudication.

14 * * * **END OF MEMORANDUM** * * *
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COURT SERVICE LIST

Jolene Kramer,
Weinberg, Roger & Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, California 94501

David N. Chandler
Law Offices of David N. Chandler
1747 4th St.
Santa Rosa, CA 95404